

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7571

Petition of Raymond Belanger vs. Village of Morrisville )	Hearing at
Water & Light Department in re billing dispute and )	Montpelier, Vermont
charges related thereto )	January 28, 2010

Order entered: 6/2/2010

PRESENT: Lars Bang-Jensen, Hearing Officer

APPEARANCES: Raymond W. Belanger, Pro Se

Craig Myotte, General Manager  
Penny T. Jones, Controller  
for Village of Morrisville Water & Light Department

Sunni Eriksen, Consumer Affairs Specialist  
William Dods, Consumer Affairs Specialist  
for Vermont Department of Public Service

**I. INTRODUCTION**

This petition concerns a challenge by Mr. Raymond W. Belanger, a customer of the Village of Morrisville Water & Light Department ("MWL"), to a bill for electric service that was presented to him for payment more than four and one-half years after some of the charges were incurred. The dispute relates to charges in the amount of \$5,417 for electric service from November, 2004, to May, 2009, on a rental property in Morrisville owned by Mr. Belanger that were billed to the wrong customer during that period, and which MWL sought to collect from Mr. Belanger beginning in June, 2009.

Mr. Belanger filed his complaint with the Public Service Board ("Board") on September 21, 2009. A prehearing conference was held on November 20, 2009, and a schedule was established to allow for a response from MWL and for rolling discovery.<sup>1</sup> MWL filed a

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1. Prehearing Conference Memorandum and Scheduling Order, Docket 7571 (11/30/09).

response to the complaint on December 7, 2009. A technical hearing was held on January 28, 2010. At the technical hearing, testimony was given, with the opportunity for cross-examination, by Mr. Belanger (for himself) and Mr. Craig Myotte and Ms. Penny T. Jones for MWL. Mr. Belanger's complaint was admitted into the record as Belanger Exhibit 1, and MWL's response to a discovery request by Mr. Belanger was admitted as Belanger Exhibit 2. Also, MWL's response to the complaint was admitted into the record as MWL Exhibit 1, and MWL's letter to Mr. Belanger's wife, dated June 2, 2009, was admitted as MWL Exhibit 2.

Briefs were due from the parties on February 26, 2010, with replies to any briefs due on March 12, 2010. MWL filed a brief on February 26, 2010. Mr. Belanger did not file a brief or reply.

Representatives of the Vermont Department of Public Service (the "Department") appeared at the technical hearing, but did not make any filings with the Board or otherwise participate in this proceeding.

## **II. FINDINGS**

1. Since 1997, Raymond W. Belanger has owned a rental property at 1710 Randolph Road in Morrisville, Vermont ("Rental Property"). Belanger exh. 1 at 1.
2. Mr. Belanger applied for electric service for the Rental Property on June 23, 1997. Belanger exh. 2; MWL exh. 1 at 4.
3. From the time he acquired the Rental Property in 1997 through May, 2009, Mr. Belanger did not have any agreement or understanding with any of his tenants at the Rental Property under which the tenant assumed responsibility for payment of the electric charges for the Rental Property. Tr. 1/28/10 at 23-24 (Belanger); Belanger exh. 1 at 2; MWL exh. 1 at 4.
4. From 1997 to November, 2004, MWL sent bills for electric charges related to the Rental Property to Mr. Belanger's post office box. MWL exh.1 at 4; Belanger exh.1 at 1; tr. 1/28/10 at 20-24 (Belanger).
5. In November, 2004, Mr. Belanger's father, Raymond R. Belanger, sold his property at 2029 Randolph Road in Morrisville. Belanger exh. 1 at 1.

6. Following this sale of Raymond R. Belanger's property, MWL transferred the electric account for this property to the new owner ("Mr. DH") and also mistakenly transferred the account for the Rental Property to Mr. DH at the same time. MWL exh. 1 at 1-2.

7. From November, 2004, to May, 2009, MWL did not charge Mr. Belanger for electric service at the Rental Property, but instead included those charges in bills sent to Mr. DH. MWL exh. 1 at 1-2.

8. The amount of electric charges related to the Rental Property from November, 2004, through May, 2009, was \$ 5,417. This same amount was erroneously billed to Mr. DH during that period. MWL exh. 1 at 2 and 4.

9. MWL did not discover the billing mistake until May, 2009. MWL exh. 1 at 2.

10. Mr. DH, a non-resident of Morrisville, never noticed the billing mistake and paid the electric charges related to the Rental Property from November, 2004, to May, 2009. MWL exh. 1 at 4 and 17; tr. 1/28/10 (Jones) at 40.

11. In June, 2009, after becoming aware of its mistake, MWL refunded all electric charges paid by Mr. DH with respect to the Rental Property. MWL exh. 1 at 4.

12. MWL contacted Mr. Belanger's wife by phone and by letter in June, 2009, informing her about MWL's mistake, the accumulated charges of \$5,417 and the possibility of a long-term payment plan for these charges. MWL exh.2.

13. MWL included accumulated past charges of \$5,417 in subsequent bills sent to Mr. Belanger for electric service to the Rental Property. Because he disputed his responsibility for paying these accumulated past charges, Mr. Belanger did not pay them. Belanger exh. 1 at 2; MWL exh. 1 at 1 and 5.

14. In June, 2009, Mr. Belanger spoke with Ms. Jones to dispute the bill for past charges resulting from the billing error. Belanger exh. 1 at 2.

15. In August, 2009, Mr. Belanger received a disconnect notice from MWL related to the Rental Property, indicating a total delinquent balance of \$5,470. Belanger exh. 1 at 2 and attachment; MWL exh. 1 at 17.

16. Mr. Belanger contacted the Department in early August. On August 6, 2009, MWL agreed, at the request of the Department, to cancel the disconnect notice for the Rental Property. Belanger exh. 1 at 2; MWL at exh. 1 at 5 and 18.

17. On September 25, 2009, with the consent of the Department and before either MWL or the Department was aware of the filing of a complaint with the Board by Mr. Belanger, MWL sent a new disconnect notice for the Rental Property. MWL exh. 1 at 5 and 6-10.

18. MWL subsequently ceased any related disconnection activity pending the Board's resolution of Mr. Belanger's complaint and agreed not to issue any disconnect notice related to a failure to pay the disputed charges while this Board proceeding is pending. MWL exh. 1 at 5; Prehearing Conference and Scheduling Memorandum of 11/30/09 at 1.

### **III. POSITIONS OF THE PARTIES**

Mr. Belanger asserts that it is unfair that MWL is now asking him to pay the electric charges for the Rental Property because the long delay in billing was the direct result of errors made by MWL that went unnoticed by MWL for four and one-half years.<sup>2</sup> Mr. Belanger does not dispute that MWL provided electric service to the Rental Property during the period from November, 2004, through May, 2009, nor does he dispute the amount of such charges.<sup>3</sup> Mr. Belanger notes that he has been a customer of MWL for 19 years, has had multiple accounts with MWL and has always paid his bills in a timely manner. Although Mr. Belanger believes MWL should bear the full financial responsibility for its mistake, he would be willing to pay the last three months of the disputed bill (for March, April and May, 2009).<sup>4</sup>

MWL regrets the unfortunate mistake that was made in the billing of two of its customers, but is unwilling to accept other than the full amount of charges for the services it provided.<sup>5</sup> As a non-profit municipal utility, MWL notes that any waiver of these charges for Mr. Belanger would effectively result in other MWL customers subsidizing the electric services

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2. Belanger exh. 1 at 3.

3. Tr. 1/28/10 at 15 (Belanger).

4. Belanger exh. 1 at 3.

5. MWL exh. 1 at 3.

received by Mr. Belanger.<sup>6</sup> MWL is willing to permit Mr. Belanger to repay the disputed amount without interest over a ten-year period.<sup>7</sup>

#### **IV. DISCUSSION**

At issue in this proceeding is the extent to which MWL can seek to collect payment for electric charges from a customer who was not billed for those charges for a period of four and one-half years due to a billing mistake by MWL and MWL's failure to detect this mistake until May, 2009. MWL's tariff that was in effect on November 1, 2004<sup>8</sup> and all its subsequent tariffs require that bills to customers be rendered on a monthly basis.

Mr. Belanger does not dispute the amount of electric charges at the Rental Property or his responsibility for paying those charges had MWL properly rendered bills for those charges to him on a monthly basis. There is also no dispute as to MWL's responsibility for mistakenly transferring the electric account for the Rental Property to another customer in November, 2004.

MWL is at fault not only for mistakenly transferring the electric account for the Rental Property to another customer in November, 2004, but also for failing to detect the mistake until May, 2009. Although Mr. Belanger and Mr. DH may share some responsibility for also failing to detect the mistake for four and one-half years,<sup>9</sup> there is no doubt that MWL is principally responsible for the mistakes in billing. Mr. Belanger understandably asserts that MWL should absorb the costs of its mistake and that he should not have to pay for electric charges that were not billed for up to four and one-half years by MWL. However, a review of applicable law and legal precedent does not support such a conclusion, except in limited circumstances.

Historically, courts and public service commissions in other states have generally taken the position that billing negligence by a regulated public utility is not an excuse for non-payment

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6. MWL exh. 1 at 2.

7. MWL exh. 2 and 3. MWL indicated that no interest would be applied to the disputed amount which would be paid by Mr. Belanger over a 120-month period. Tr. 11/20/09 at 19 (Jones). It thus appears that the amount of the disputed bill that would be paid each month by Mr. Belanger would be about \$45.

8. MWL Tariffs (TR #6753, approved 10/21/04 in Docket 6986).

9. As MWL notes, had Mr. Belanger noticed "the fact that he was no longer receiving a bill that he had received in the past," MWL would have been able to correct the mistake more promptly. MWL Brief at 3.

for services rendered by such utility to a customer. The Board noted the traditional rule in an earlier proceeding:

The general rule, in most jurisdictions, is that a person who receives goods or services from a regulated utility must pay for them at the tarified price, no matter what the impact upon the customer may be and no matter how careless the utility may have been in its billing.<sup>10</sup>

This general rule has been applied in other jurisdictions under fact patterns that are similar to the facts in this proceeding.<sup>11</sup> This traditional rule was based on the public policy against discriminatory rates and the view that rates established by a public service commission should be given a higher status in law than financial terms in private contracts. Excusing a customer from paying for services provided because of a billing error by the utility has been seen as constituting an unfair discrimination in rates in favor of that customer. Public policy considerations concerning the fairness to other ratepayers is a matter of even greater concern in this proceeding because the practical effect of denying MWL, a municipal utility, the ability to pursue its claim for electric charges against Mr. Belanger would mean that other ratepayers would be indirectly assuming those charges.<sup>12</sup>

In the past, the Board has not strictly applied the traditional rule. Instead, the Board has allowed for equitable limitations on a utility's ability to collect undercharges resulting from

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10. *Petition of Dick Brady vs. Citizens Utilities Company In RE: dispute concerning metering and billing charges related thereto*, Docket 5499, Order of 11/8/91 at 4.

11. *Memphis Light, Gas & Water Div. v. Auburndale School System*, 705 SW 2d 652 (Tenn. 1986: five years of under-billing resulting from utility's mistake could be recovered from a customer by the utility); *Union Electric Co. v. Panepinto*, 293 NE 2d 156 (Ill. App. 1973: electric utility awarded \$2,225 for electricity furnished to a customer for a period of 89 months during which time no bills were rendered to the customer); *see also, West Penn Power Co. v. Nationwide Mutual Insurance Co.*, 509 A. 2d (Pa. Superior 1967).

12. "To waive these charges requires the rest of our customers to pay for (subsidize) the service provided and used by Raymond W. Belanger." MWL exh. 1 at 2. *See also* tr. 1/28/10 at 13 (Belanger) and MWL brief at 2.

billing mistakes.<sup>13</sup> In order to prevail, the customer "must be able to show both detrimental reliance and ignorance of the basis upon which an incorrect billing has been made."<sup>14</sup>

In order to demonstrate ignorance of the billing mistake, Mr. Belanger must establish that he was unaware of the billing mistake by MWL. All the previous relevant Board decisions that I have reviewed have involved the under-billing of charges rather than a failure to provide bills. A customer's unawareness that he is being under-billed, generally, would seem easier to demonstrate than a failure to notice the non-receipt of bills. Certainly, Mr. Belanger shares some responsibility with MWL and Mr. DH for not detecting MWL's billing mistake at any time during the period from November, 2004, through May, 2009. In addition, Board precedent establishes a fairly high threshold for establishing ignorance, namely that "it must appear that the customer could not reasonably be expected to have known the actual facts in view of all the relevant circumstances."<sup>15</sup>

Mr. Belanger cites several factors in explaining his failure to notice the billing error, including (i) his change of residence in Morrisville in October, 2004, (ii) his ownership of three other rental properties in Morrisville which entails the receipt of multiple bills for electric charges, the number of which changes periodically with tenant occupancy and billing arrangements, (iii) the fact that his wife (rather than he) handled the payment of monthly bills as they came in, and (iv) that over a period of time, Mr. Belanger came to believe that the tenant

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13. In *Petition of Dick Brady vs. Citizens Utilities Company In RE: dispute concerning metering and billing charges related thereto*, Docket 5499, Order of 11/8/91, a utility was barred from collecting the actual amount of charges that had been under-billed by the utility because the Board found that (i) the customer did not have reason to know about a continued under-billing for electric charges that preceded his purchase of a dairy farm, and (2) the customer relied upon the billed amount of electric charges in purchasing the farm. See also, *Petition of Peck vs. Central Vermont Public Service Corp.*, Docket 4217, Order of 7/25/77 (the Board found that had the petitioners known the true cost of their electric usage, they would have moved out of their rental unit and, on this basis, barred Central Vermont Public Service Corp. from collecting the amount that was under-billed as a result of its inaccurate and faulty accounting procedure); and *Petition of Qualitat Sales Corporation vs. Central Vermont Public Service Corporation re: a dispute concerning the collection of underbilled charges*, Docket 4929, Order of 8/30/85 (the Board found that the petitioners were unaware of the under-billing and relied on the under-billed rates in setting prices for their goods and in not reducing electricity consumption).

14. *Petition of Qualitat Sales Corporation vs. Central Vermont Public Service Corporation re: a dispute concerning the collection of underbilled charges*, Docket 4929, Order of August 30, 1985, at 20.

15. *Id.* at 20.

was probably receiving and paying the electric bills directly.<sup>16</sup> Furthermore, in assessing the reasonableness of Mr. Belanger's apparent failure to notice the billing mistake, it must also be acknowledged that both MWL and Mr. DH (the over-billed customer) were equally unaware of the billing mistake.

Even if one were to grant the reasonableness of Mr. Belanger's ignorance as to MWL's billing mistake, Mr. Belanger has not made a sufficient showing of detrimental reliance to prevail under the standards established in Board precedent. To support a showing of detrimental reliance, Mr. Belanger must essentially show that as a reasonable result of MWL's conduct (its billing mistake), he is in a worse position than he would have been if MWL had not erred.

One potential basis of detrimental reliance might exist if Mr. Belanger had in fact had an agreement with the tenants of the Rental Property that they would receive the bills and be responsible for the payment of electric charges. In such an instance, MWL's billing mistake could have had significant negative financial consequences for Mr. Belanger if MWL was now permitted to collect such charges from Mr. Belanger.

In this case, Mr. Belanger acknowledges that he never had any agreement or arrangement with any of the tenants at the Rental Property under which any tenant agreed to assume responsibility for the electric charges of the Rental Property.<sup>17</sup> There is no reason to doubt that over time Mr. Belanger came to believe that the tenant at the Rental Property must have been paying the electric bill directly. It is also possible, though not proven, that Mr. Belanger might have requested a rent increase from the tenant if he had not come to believe that the tenants were paying the electric bill. However, Mr. Belanger's untested and mistaken assumption that his failure to receive bills for electric charges for the Rental Property must have meant that his tenant was receiving and paying them does not provide a reasonable basis for his reliance, given the absence of any agreement or understanding to that effect between Mr. Belanger and any Rental Property tenant. Mr. Belanger apparently made no effort to verify, with either his tenant or

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16. Belanger exh.1 at 1-2; tr. 1/28/10 at 11-12, 18-19 and 23-24 (Belanger).

17. Tr. 1/28/10 at 23-24 (Belanger).

MWL, his mistaken belief that the Rental Property tenant was paying the electric bills, and this belief was, in fact, inconsistent with his own agreements and understandings with the tenant.

Mr. Belanger states that it was his intention, beginning in the summer of 2001 or 2002, to enter into arrangements for the Rental Property under which the tenant would assume responsibility for electric charges.<sup>18</sup> And it is likely that the receipt of regular electric bills by Mr. Belanger from MWL for the Rental Property during the period from November, 2004, through May, 2009, would, as Mr. Belanger suggests, have served as a reminder to him to enter into arrangements with the tenant and MWL to transfer the electric account for the Rental Property.<sup>19</sup> However, even if one could fashion a reliance claim based on these facts, the failure to enter into such arrangements with tenants cannot be presumed to be detrimental to Mr. Belanger as any negotiations or agreements with tenants about the responsibilities for electric charges would presumably also affect the amount of rental payments.

In all, there is little basis in the record to conclude that MWL's billing mistake had a detrimental effect on Mr. Belanger or that a correction of MWL's billing mistake would have greater negative economic consequences for Mr. Belanger than if the mistake had not been made. No economic harm to Mr. Belanger has been demonstrated as a result of MWL's billing mistake. Arguably, as a consequence of the billing mistake, Mr. Belanger unknowingly received an involuntary interest-free loan for four and one-half years; and the consequences for Mr. Belanger of any correction of the mistake in terms of repayment will be stretched over several years without any accrual of interest on the unpaid balance.<sup>20</sup>

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18. When Mr. Belanger acquired the Rental Property and two other rental properties on Randolph Road in 1997, the water pump for all of the properties was routed through the Rental Property. In 2001 or 2002, Mr. Belanger changed the routing of the water pumping system which made it possible for the tenant to assume the electric bill for the Rental Property. For various reasons, he had not entered into such an arrangement with the tenant of the Rental Property before November, 2004, but indicates that he fully intended to do so some time in the future. Belanger exh. 1 at 2; tr. 1/28/10 at 15-17 and 20-26 (Belanger).

19. Tr. 1/28/10 at 15 and 24 (Belanger).

20. In terms of the repayment of amounts not billed or under-billed as a result of an error by the utility, the Department apparently takes the position that the utility has to give the customer at least as long a period to repay such amounts as the period during which the utility failed to bill or under-billed the customer. MWL exh. 1 at 18. In addition, MWL has indicated that it would agree to let Mr. Belanger repay the \$5,417 of utility charges on an interest-free basis over a ten-year period (approximately \$45 a month over 120 months). Exh. MWL 1 at 2 and 14;

Acknowledging the absence of a detrimental economic effect is not to minimize MWL's mistake or the reasonable shock and surprise Mr. Belanger no doubt experienced upon learning of the magnitude of MWL's error and its potential consequences for him. Mr. Belanger believably contends that he "would have preferred and been just as happy if [MWL] had never made the mistake" and he had received and paid the bills on a monthly basis.<sup>21</sup> And there is certainly merit in Mr. Belanger's view that MWL should bear the consequences of its mistake. There are also grounds for criticizing some of MWL's behavior toward Mr. Belanger following its discovery of its billing error (especially its failure to get back to Mr. Belanger and advise him of the Village Board's decision to reject his protest and to seek to collect the full amount of the unbilled charges).<sup>22</sup> Nevertheless, prior decisions of the Board provide little basis for limiting MWL's ability to collect the disputed electric bills. In addition, the consequences for other MWL ratepayers of any such relief to Mr. Belanger cannot be ignored.

The standards applied above come from Board precedents that predate the current members of the Board. The last applicable Board decision dates from almost 20 years ago. Accordingly, it is appropriate to take note of developments in other jurisdictions with respect the subsequent collection of non-billed or under-billed charges.

First, it appears that the Board is still in the minority of states that have considered the question in allowing a utility customer to raise equitable defenses to the collection of negligently under-billed or non-billed charges.<sup>23</sup> However, in 2000, the Georgia Supreme Court held,

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tr. 11/20/09 at 19 (Jones); MWL brief (2/26/10) at 4.

21. Tr. 1/28/10 at 28 (Belanger).

22. Belanger exh. 1 at 2; MWL exh. 1 at 4 and 5; tr. 1/28/10 (Jones) at 45-50. Mr. Belanger discussed his concerns about the fairness of the long-delayed bill for electric charges with Ms. Jones in early June, and Ms. Jones indicated that she would raise his concerns with the General Manager and the Morrisville Village Board. Mr. Belanger understood that MWL would contact him following these discussions. At a meeting on June 22, 2009, the Village Board concluded that MWL should seek to collect the disputed charges, but MWL never contacted Mr. Belanger to inform him of this outcome. In early August, 2009, Mr. Belanger received a disconnect notice from MWL with respect to the Rental Property. Belanger exh. 1 at 2. Ms. Jones testified that the August disconnect notice was among the 300 to 400 disconnect notices that are automatically generated each month by MWL's billing system. Tr. 1/28/10 (Jones) at 48-50; MWL exh. 1 at 5.

23. In disallowing equitable defenses to collection by a utility for its under-billing error that persisted for five years, the Tennessee Supreme Court noted:

similar to Board precedent, that certain equitable defenses against collection were available to a utility customer that was negligently under-billed by a utility.<sup>24</sup>

Second, and more significantly, at least several jurisdictions have adopted consumer protection laws or regulations that impose time limitations on the ability of utilities to collect charges from customers that were not timely billed or were under-billed. For example, under regulations issued by the New York Public Service Commission under the Home Energy Fair Practices Act:

No utility shall charge a residential customer for service rendered more than six months prior to the mailing of the first bill for service to the residential customer unless the failure of the utility to bill at an earlier time was not due to the neglect of the utility or was due to the culpable conduct of the customer.<sup>25</sup>

Similarly, electric utility regulations in Texas provide that, if a utility under-bills or fails to bill a customer for service, the "backbilling shall not collect charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the

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While no reported cases in this jurisdiction have considered the issue, the overwhelming weight of authority from other jurisdictions holds that where a public utility negligently under-bills a customer for electricity consumed, the defense of equitable estoppel is not available to the customer to bar the utility from collecting for the electricity actually consumed. *See e.g.*, *Chesapeake & Potomac Tel. Co. of Virginia v. Bles*, 218 Va. 1010, 243 S.E.2d 473 (1978); *Haverhill Gas Co. v. Findlen*, 357 Mass. 417, 258 N.E.2d 294 (1970); *Wisconsin Power & Light Co. v. Berlin Tanning & Mfg. Co.*, 275 Wis. 554, 83 N.W.2d 147 (1957); *Sigal v. City of Detroit*, 140 Mich.App. 39, 362 N.W.2d 886 (1985); *Corp. De Gestion Ste-Foy v. Florida Power & Light*, 385 So.2d 124 (Fla.App.1980); *Shoemaker v. Mtn. States Tel. & Tel. Co.*, 38 Colo.App. 321, 559 P.2d 721 (1976).

*Memphis Light, Gas & Water Div. v. Auburndale School System*, 705 SW 2d 652 (Tenn 1986). *See also*, *Cincinnati Gas & Elec. v. Joseph Chevrolet Co.*, 791 N.E.2d 1016 (Ohio App. 2003) in which the court held that a customer could not assert equitable estoppel and laches defenses in public utility's action to recover payment for unbilled gas consumption over 23-month period.

24. *Brown v Walton Electric Membership Corporation*, 531 S.E. 2d 712 (GA 2000). The Georgia Supreme Court reversed an appellate court and prior Georgia precedent in holding that a customer can assert equitable defenses when an electric utility sues to recover for under-billed charges. The court acknowledged in its decision that the majority of jurisdictions do not permit a customer to avoid liability for electric services that were negligently under-billed by the utility.

25. Title 16 of New York Compilation of Codes, Rules Governing the Provision of Gas, Electric and Steam Service to Residential Customers, Parts 11 and 12, § 11.14.

customer."<sup>26</sup> Florida regulations provide that "a utility may not backbill its customers for any period greater than 12 months for any undercharge in billing that is the result of the utility's mistake."<sup>27</sup>

At the present time, Vermont has no similar law or regulation that would limit the time period for which a utility may backbill a customer in the event of a billing error. However, Board rules do limit a utility's ability to disconnect a customer when the delinquency is more than two years old. Board Rule 3.302 (B)(2) provides that disconnection shall not be permitted if "the only charges or bills constituting the delinquency are more than two years old." Both MWL and the Department interpret this rule as limiting MWL's ability to disconnect Mr. Belanger for that portion of the previously unbilled charges that are more than two years old.<sup>28</sup> However, there is no basis to conclude that this limitation on MWL's disconnection rights would limit MWL's ability to take other legal actions in state court to collect the remaining balance.<sup>29</sup>

Even though I have found no basis in Board precedent or law that would limit MWL's ability to collect the electric charges in question, it is important to note the limits of the Board's jurisdiction in this matter. This proceeding arises from a consumer complaint by a customer asserting that it is unfair for MWL to require the customer to pay certain charges. By statute, the

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26. Rules of the Texas Public Utilities Commission, Chap. 25 (Substantive Rules Applicable to Electric Service Providers), Subchap. B (Customer Service and Protection), §25.28 (eff. 1999).

27. Florida Public Service Commission Rule 25-6.106 (eff. 1982). This Florida regulation also provides that any resulting lost revenues may not be recovered in a ratemaking proceeding. *See also* Idaho Public Utilities Commission Utility Customer Relations Rule 204-02-c :

If the time when the malfunction or error can be reasonably determined and the utility determines the customer was undercharged, the utility may rebill for a period of six (6) months unless a reasonable person should have known of the inaccurate billing, in which case the rebilling may be extended for a period not to exceed three (3) years.

Utah Public Service Commission Rule 746-310-8(d)(1) states that a "utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect."

28. MWL exh. 1 at 8.

29. In an exchange of emails between MWL and the Department, the Department on September 11, 2009, expressed the view that MWL "would only be able to disconnect on the charges less than two years old," but could "still take other collection actions for the remaining balance." MWL exh. 1 at 8.

Board has authority to hear consumer complaints<sup>30</sup> and has jurisdiction over the manner in which MWL operates and conducts its business with respect to the distribution and sale of electricity to the public, including the regulation of the grounds upon which MWL may disconnect a customer's service.<sup>31</sup>

However, the Board has no jurisdiction over a utility's customers. Among other jurisdictional limitations, the Board lacks the legal authority to direct Mr. Belanger to pay any of the disputed charges. To the extent that MWL seeks to collect any balance of the charges in the Vermont civil court system, Mr. Belanger will be free to raise any legal or equitable defense in such collection action, including equitable estoppel, accord and satisfaction and any statute of limitations defense or other defense that may arguably be available.

## **V. CONCLUSION**

Prior Board decisions establish equitable limitations on a utility's ability to collect undercharges resulting from its billing mistakes. Under applicable Board precedent, there must be a sufficient showing by the customer of both detrimental reliance and a reasonable basis for ignorance of the billing mistake. For the reasons discussed above, I have concluded that there is insufficient evidence of detrimental reliance by Mr. Belanger. Given the absence of a sufficient basis in either law or Board precedent to support Mr. Belanger's complaint that MWL should be barred from collecting charges for electric services that were not billed for up to four and one-half years due to billing errors by MWL, I conclude that his complaint should be denied.

MWL has stated that it would be willing to allow for payment by Mr. Belanger of the disputed amount without interest over a period of ten years. I believe it is appropriate, given MWL's responsibility for the billing error and the significant amount of the charges resulting

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30. "A complaint to the public service board may be made against a company subject to the supervision under the provisions of this chapter concerning any claimed unlawful act or neglect adversely affecting the complainant. . . ." 30 V.S.A. § 208.

31. 30 V.S.A. § 209(b)(2) and (3).

from that error, that MWL adhere to this payment plan with respect to any recovery by it of these charges.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 11th day of May, 2010.

s/ Lars Bang-Jensen

Lars Bang-Jensen  
Hearing Officer

## **VI. BOARD DISCUSSION**

MWL filed a letter with the Board on May 7, 2010, in which it supported the conclusions of the Hearing Officer's proposal for decision and requested that the Board adopt the proposal for decision as written. Neither Mr. Belanger nor the Department filed any comments on the proposal for decision.

The Board agrees with the findings, conclusions and recommendations of the Hearing Officer. Although the Board understands the frustration experienced by Mr. Belanger as a result of MWL's billing mistake, the Board views MWL's proposal to allow Mr. Belanger to pay the \$5,417 over a ten-year period without interest to be very accommodating. Such a result lessens any hardship to Mr. Belanger, while avoiding the subsidization of these charges in the long term by other ratepayers.

The Board has two other observations to contribute. The Hearing Officer noted above that the applicable Board precedents predate the tenure of all current members of the Board. To avoid any uncertainty, the Board wishes to clarify that the value of Board precedent is the same whether such precedent predates current members of the Board or not. In addition, the Board notes that non-billing or under-billing by utilities may affect energy efficiency decisions by customers. While not at issue in this proceeding, a customer in a future proceeding may be able to demonstrate that such customer would have undertaken certain energy efficiency measures to reduce bills if such customer had been provided with accurate bills on a timely basis.

## **VII. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendations of the Hearing Officer are adopted.
2. The complaint by Mr. Belanger is denied.
3. MWL shall not seek to require payment from Mr. Belanger of the \$5,417 in charges under a payment schedule that is inconsistent with a ten-year payment plan without interest.

Dated at Montpelier, Vermont, this 2nd day of June, 2010.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: June 2, 2010

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*